

This Opinion is not a  
Precedent of the TTAB

Mailed: May 24, 2021

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board  
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*In re Cybeye, Inc.*  
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Serial No. 88587327  
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Edward F. Behm, Jr. of Armstrong Teasdale LLP,  
for Cybeye, Inc.

Sharon A. Meier, Trademark Examining Attorney, Law Office 112,  
Renee Servance, Managing Attorney.

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Before Lykos, Kuczma and Heasley,  
Administrative Trademark Judges.

Opinion by Kuczma, Administrative Trademark Judge:

Cybeye, Inc. (“Applicant”) seeks registration on the Principal Register of the mark

LIVE24 (in standard characters) for:

Downloadable mobile application providing a live  
streaming-based AMA (Ask-Me-Anything) crowd  
knowledge platform, in International Class 9.<sup>1</sup>

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<sup>1</sup> Application Serial No. 88587327 was filed on August 21, 2019, based upon Applicant’s assertion of a *bona fide* intention to use the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b).

The Trademark Examining Attorney refused registration of LIVE24 under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), on the ground that the proposed mark is merely descriptive of the identified goods. Registration was also refused on the ground that the identification of goods is indefinite and must be clarified, *see* Trademark Rule 2.32(a)(6), 37 C.F.R. § 2.32(a)(6).

After the Trademark Examining Attorney made the refusals final, Applicant appealed to this Board. For the reasons set forth below, the refusals to register are affirmed.

#### I. Descriptiveness Under Section 2(e)(1)

Determining the descriptiveness of a mark under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1), is done in relation to an applicant's goods, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)). For a term to be merely descriptive within the meaning of § 2(e)(1), it is not necessary that the term describe each feature of the goods, only that it conveys a single, significant ingredient, quality, characteristic, feature, function, purpose or use of the goods with which it is used. *See, e.g., In re TriVita, Inc.*, 783

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Page references to the application record refer to the online database of the USPTO's Trademark Status & Document Retrieval (TSDR) system. References to the briefs on appeal refer to the Board's TTABVUE docket system.

F.3d 872, 874, 114 USPQ2d 1574, 1575 (Fed. Cir. 2015) (quoting *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004)); *In re Chamber of Commerce*, 102 USPQ2d at 1219; *In re Gyulay*, 820 F.2d 1216, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987).

Marks comprising more than one element, like Applicant's mark, must be considered as a whole and should not be dissected; however, we may consider the significance of each element separately in the course of evaluating the mark as a whole. *See DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753, 1757 (Fed. Cir. 2012). Thus, we look first to the meaning of the components of Applicant's applied-for mark LIVE24.

The Examining Attorney maintains that both parts of Applicant's applied-for mark LIVE24 describe a significant feature or function of its goods. The Examining Attorney cites to the dictionary definitions, defining "live"<sup>2</sup> as:

Broadcast while actually being performed; not taped, filmed, or recorded: a live television program.

The American Heritage Dictionary of the English Language, <https://www.ahdictionary.com/word/search.html?q=live> (visited on 4/17/2020)

The definition of live is seeing or hearing a performance as it is happening, not prerecorded.

Your Dictionary, <http://www.yourdictionary.com/live> (visited on 07/30/2018, 04/17/2020)

Live – Computer Definition

An event that is broadcast or recorded as it happens.

Your Dictionary, <http://www.yourdictionary.com/live> (visited on 07/30/2018, 04/17/2020)

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<sup>2</sup> September 23, 2019 Office Action, TSDR at 4, 76, 100, 106; April 21, 2020 Final Office Action, TSDR 57, 58, 64.

and defining “24”<sup>3</sup> as:

24- Short for 24 hours a day, 7 days a week.

Your Dictionary, [http://www.yourdictionary.com/24#americanheritage?](http://www.yourdictionary.com/24#americanheritage?direct_search_result=yes)  
direct\_search\_result=yes (07/30/2018).

As noted by the Examining Attorney, Applicant’s identification of goods specifically refers to the “live” feature of its mobile application when it specifies that the mobile application is “providing a **live** streaming-based AMA (Ask Me Anything) crowd knowledge platform (Emphasis added)”<sup>4</sup> and “24” is a commonly used and understood reference to the 24 hours in a day.<sup>5</sup> Thus, the Examining Attorney argues “when the wording ‘LIVE24’ is considered in relation to Applicant’s goods, it merely describes a feature of function of the applicant’s mobile software application, namely, that the applicant’s goods feature mobile applications that provide a live streaming based AMA (Ask-Me-Anything) crowd knowledge platform that include 24 hour functions and availability.”<sup>6</sup>

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<sup>3</sup> September 23, 2019 Office Action, TSDR at 108.

Additionally, the Examining Attorney requested that we take judicial notice of the definition of “24” from the Merriam-Webster Dictionary (“being one more than 23 in number,” <https://merriam-webster.com/dictionary/twenty-four> (02/08/2021)) submitted with the Examining Attorney’s Brief. The Board may take judicial notice of online dictionary definitions submitted with an examining attorney’s appeal brief including online dictionaries that exist in printed format or have regular fixed editions, *See e.g., In re S. Malhotra & Co. AG*, 128 USPQ2d 1100, 1104 n.9 (TTAB 2018); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006). *See also Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983). However, we decline to take judicial notice of this definition since it does not add anything relevant to the definition that is already of record.

<sup>4</sup> Examining Attorney’s Brief at 6 TTABVUE 3.

<sup>5</sup> Examining Attorney’s Brief at 6 TTABVUE 4.

<sup>6</sup> Examining Attorney’s Brief at 6 TTABVUE 3.

Applicant responds that “[i]n the dictionary link the Examining Attorney provided, <https://www.ahdictionary.com/word/search.html=live>, there are multiple meanings for ‘LIVE’ in both verb and adjective forms,” noting seven meanings for the verb form of “live” and twelve meanings for the adjective form, arguing that in view of the nineteen definitions listed in the American Heritage Dictionary cited by the Examining Attorney, it is likely that Applicant’s mark is not merely descriptive.<sup>7</sup>

However, the fact that a term may have different meanings in other contexts is not controlling on the question of descriptiveness. It is well settled that so long as any one of the meanings of a term is descriptive, the term may be considered to be merely descriptive. *Robinson v. Hot Grabba Leaf, LLC*, 2019 USPQ2d 149089, at \*5 (TTAB 2019) (citing *In re Canine Caviar Pet Foods, Inc.*, 126 USPQ2d 1590, 1598 (TTAB 2018)); *In re Mueller Sports Med., Inc.*, 126 USPQ2d 1584, 1590 (TTAB 2018) (quoting *In re Chopper Indus.*, 222 USPQ 258, 259 (TTAB 1984)). Accordingly, Applicant’s argument regarding the other meanings of the term LIVE is not persuasive since at least one of the meanings is merely descriptive.

The Examining Attorney also submits copies of several registrations for marks covering various goods and services that disclaim the word “live.”<sup>8</sup> Third-party

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<sup>7</sup> Applicant’s Brief pp. 5-6 (4 TTABVUE 6-7). See definitions of “live” from The American Heritage Dictionary cited by Examining Attorney at September 23, 2019 Office Action at TSDR 74-77 and April 21, 2020 Final Office Action at TSDR 56-57.

<sup>8</sup> See September 23, 2019 Office Action at TSDR 26-28, 37-39, 43-45, 53-64, 68-70 (identifications of goods/services summarized): Registration Nos. 5156386 for SHREDD LIVE & Design for a variety of computer services including creating on-line community for registered users to engage in discussions and networking, on-line web facilities for organizing and conducting meetings via communication networks; application service provider (ASP) featuring software to enable or facilitate the uploading, downloading, etc. electronic media or information over communication networks; etc., 4846895 for NETBASE LIVE PULSE for the

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provision of on-line and social media monitoring and analysis services; providing information, data asset and brand and identity management services, 4649234 for HUFFBROS LIVE for the provision of programs featuring news and commentary delivered via computer networks and communications networks; providing a website featuring non-downloadable videos in the fields of men's lifestyles, topics of interest to men, comedy, sports, music, popular culture, and entertainment, 5205503 for LIVE MATCH & Design for on-line social networking services in the field of sports; creating an on-line community for users to participate in discussions relating to sports, 4992435 for KIWILIVE & Design for providing a website featuring technology that enables users to upload, download, and access files in connection with presentations, 5297313 for LIVE NATIONS PRODUCTIONS for production and distribution of audiovisual recordings and multimedia entertainment content featuring music, popular culture, entertainment and social commentary via the internet, mobile applications and television, 5191242 for ACCESS HOLLYWOOD LIVE & Design for a television series in the nature of an entertainment news program and a website providing information in the fields of movies, television, publishing, music, personalities, celebrities, gossip, videos, lifestyle, popular culture and topics of general interest transmitted via various platforms across multiple forms of media, 5366215 for SUCCESS LIVE for providing a website featuring non-downloadable publications in the nature of e-zines, newsletters, books, and blog posts in the field of business, branding, and current events; publication of books, magazines, journals, newspapers, periodicals, catalogs, brochures; a continuing program about business, branding, and current events accessible by means of radio, television, satellite, audio, video, web-based applications, mobile phone applications, and computer networks; April 21, 2020 Final Office Action at TSDR 12-23, 36-38, 42-44, 48-55 (identifications of goods/services summarized): Registration Nos. 3063135 for FLEX LIVE for computer software used for analyzing and displaying live streaming data in charts and graphical form, 4139966 for IGOLF LIVE for audio and video broadcasting services over the Internet; electronic transmission of voice, data and images by television and video broadcasting; interactive delivery of video over digital networks; etc., 4380622 for LEVITY LIVE for electronic delivery of still images via a global computer network; data communication and electronic ticket delivery by electronic mail; distribution of live concert recordings via streaming of audio and video material on the Internet, and other services, 4495350 for SEACRETS LIVE for providing an Internet website featuring streaming of live camera feeds showing entertainment facilities; live music concerts and providing an Internet website featuring information regarding music concerts and upcoming musical and entertainment events, non-downloadable music, and videos of music performances, 4862574 for PPV LIVE & Design for audio and video broadcasting services over the Internet; streaming of live entertainment performances; electronic transmission and streaming of digital media content for others via global and local computer networks, 5380639 for VFILES LIVE for electronic messaging; streaming of video material on the Internet; transmission of electronic media, multimedia content, videos, movies, pictures, images, text, photos, user-generated content, audio content, and information via the Internet and other communications networks, 5605275 for LIVE OBJECT STORE for communications software for connecting a cluster of live streaming servers, 5927876 for SEESTER TALK LIVE for streaming of audio, visual and audiovisual material via a global computer network; streaming of comedy material on the Internet, 5811497 for U LIVE for computer software for sharing of live streaming of pictures, audio, video, and other digital media content to local users via a global computer network and on the internet.

registrations featuring goods and/or services the same as or similar to (i.e., computer-related networks and services, online, Internet and electronic transmission, related goods and services) Applicant's goods are probative evidence on the issue of descriptiveness where the relevant word or term is disclaimed, registered under Trademark Act Section 2(f) based on acquired distinctiveness, or registered on the Supplemental Register. *See e.g., In re Morinaga Nyugyo Kabushiki Kaisha*, 120 USPQ2d 1738, 1745 (TTAB 2016) (quoting *Inst. Nat'l des Appellations D'Origine v. Vintners Int'l Co.*, 958 F.2d 1574, 22 USPQ2d 1190, 1196 (Fed. Cir. 1992)); *In re Box Sols. Corp.*, 79 USPQ2d 1953, 1955 (TTAB 2006).

With respect to the "24" portion of Applicant's applied-for mark, Applicant contends that the Examining Attorney's argument that "24" is part of 24-7 is very different from "24" used alone, as it is in Applicant's mark. Applicant argues that the number "'24' alone is not merely descriptive of anything, . . . For example, a possible meaning of the combination can mean to stay alive for 24 months, or years," although it admits that the number 24 is generally recognized as a part of the composite term 24-7 i.e., "24-7 is an obvious indication of the '24' representing the 24 hours, 7 days a week."<sup>9</sup>

Applicant's assertion that consumers encountering the number 24 would not perceive it to refer to the number of hours in a day is contradicted by the common

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Registration Nos. 4008047 for LIVE MATRIX, 4144252 for MEET N GREET LIVE and 4464124 for SNAP STAR LIVE have been cancelled and not considered (*see* September 23, 2019 Office Action at TSDR 15-17, 21-22, 29-31).

<sup>9</sup> Applicant's Brief. p. 6 (4 TTABVUE 7). Also, see definition of the number 24: "Short for 24 hours a day, 7 days a week." September 23, 2019 Office Action at TSDR 108.

understanding and association of 24 with the number of hours in a day, as Applicant itself admits, and shown in the third-party registrations of record for numerous marks (for i.e., computer-related networks and services, online, Internet and electronic transmission, related goods and services) all containing the disclaimed number “24.”<sup>10</sup>

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<sup>10</sup> See September 23, 2019 Office Action at TSDR 18-20, 23-25, 32-36, 40-42, 46-47, 51-52, 65-67, 71-73 (identifications of goods/services summarized): Registration Nos. 4034413 for openDoctors 24 7 & Design for providing a website featuring nondownloadable software for online healthcare appointment scheduling, 4698073 for F & P 24 & Design for Providing travel management services, 4632027 for FLEX 24 for physical fitness studio, 466266 for LIFE BUTTON 24 & Design for alarm response and verification services; emergency response alarm monitoring services for the dispatch of emergency public health and security services and notification, 4746634 for TRUE 24 for 24 hour HVAC repair services, 4900417 for SPRINGWELL 24 for retail convenience stores, 5209269 for ANYCARE 24 & Design for medical clinics, 5354334 for 24 SNAP SERVICE & Design for downloadable computer application software for mobile phones for finding, researching, purchasing, and scheduling repair services for HVAC, plumbing fixtures and piping, electrical fixtures and wiring, and appliances; April 21, 2020 Final Office Action at TSDR 7-11, 24-35, 39-41, 45-47 (identifications of goods/services summarized): Registration Nos. 2540747 for CONNECT 24 for electronic transmission of data and remote monitoring of machines and security systems, 2981478 for IRVING 24 for magnetic coded cards, and transaction processing and reporting services in respect of the use of such cards, for use by customers to obtain products and services that relate to the use, operations and maintenance of automotive equipment and vehicles, 4463584 for SITELINK 24 & Design for providing web-based, on-line portals providing customer access to account information regarding energy consumption for web-enabled home and business security and video monitoring to maintain and repair customers’ automated security and video monitoring systems, 4685250 for CLAIMFORCE 24 24 hr. Platinum Inspection Service & Design for application service provider (ASP) featuring software in the fields of property and casualty insurance claims and fleet claims management, and electronic processing of insurance claims and payment data, 4636781 for 24Hrs. NETWORK & Design for installation, maintenance and repair of integrated security software; 24/7 monitoring of network systems, servers and web and database applications; remote and on-site infrastructure management services for monitoring, administration and management of cloud computing IT and application systems, 4834784 for WRAPAROUND 24 x 7 for software as a service (SAAS) services featuring software for developing collaborations and content management products designed to support health care and mental health interactions in team based environments, 5354334 for 24 SNAP SERVICE & Design for downloadable computer application software for mobile phones for finding, researching, purchasing, and scheduling repair services for HVAC, plumbing and electrical fixtures and wiring, and appliances, 5559887 for DOCTA 24 7 & Design for computer services, namely,

Undoubtedly, consumers will recognize the number “24” either standing alone or in other composite combinations to represent 24 hours, especially here, where Applicant promotes its mobile application by specifically referring to functions and features that are available for 24 hours:

Viewers can watch broadcasts posted around the world within the past 24 hours.<sup>11</sup>

Social Live Stream Mobile App that allows users to post live video/audio streams and auto-deletes them after 24 hours.<sup>12</sup>

24 hours/Q&A (February 7)

Live24 means we’re live 24 hours! (January 26)

Live24 means 24/7 we’re always here (January 23)<sup>13</sup>

Applicant’s own use of the individual terms in the mark in a descriptive manner is also strong evidence that the combined term is merely descriptive. *See, e.g., In re Gould Paper Corp.*, 834 F.2d 1017, 5 USPQ2d 1110, 1112 (Fed. Cir. 1987) (“[applicant’s] own submissions provided the most damaging evidence that [the word

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integration of private and public cloud computing environments (at TSDR 7-11, 24-35, 39-41, 45-47).

Registration No. 4360446 for Mommies 24 7 & Design has been cancelled and not considered. (September 23, 2019 Office Action at TSDR 23-25).

<sup>11</sup> September 23, 2019 Office Action at TSDR 87, <http://www.cybeye.com/us/appintro.jsp?a=Live24> (12/31/2017); TSDR 91-92, <https://appadvice.com/app/live24-social-live-video-streaming/1090762229> (07/30/2018) and April 21, 2020 Final Office Action, at TSDR 75, <https://apk.support/app/com.cybeye.live24> (04/17/2000), advertising Applicant’s goods as “Viewers can watch broadcasts posted around the world within the past 24 hours.”

<sup>12</sup> Final April 21, 2020 Office Action at <https://appadvice.com/app/live24-social-live-video-streaming/1090762229> (04/17/2000) at TSDR 69-72, advertising Applicant’s goods as “Social Live Stream Mobile App that allows users to post live video/audio streams and auto-deletes them after 24 hours.”

<sup>13</sup> September 23, 2019 Office Action at TSDR 96-97, <https://en-gb.facebook.com/Live24-144360639559707/> (07/30/2018) Facebook post regarding Live 24 mentions “24 hours/Q&A,” “Live24 means we’re live 24 hours!” “Live24 means 24/7 we’re always here.”

SCREENWIPE is generic]”); *In re Abcor Dev. Corp.*, 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (“Evidence of the context in which a mark is used ... in advertising material ... is probative of the reaction of prospective purchasers to the mark”); *In re Educ. Commc’ns, Inc.*, 231 USPQ 787, 790 (TTAB 1986) (“applicant’s own highly descriptive usages of the components of its asserted mark ... is strong evidence of its generic nature”).

Applicant’s identified goods are downloadable mobile applications that provide live streaming 24 hours a day, and posts that are created by the users of the application are deleted after 24 hours.<sup>14</sup> Therefore, when the term LIVE24 is considered in relation to Applicant’s goods, it is merely descriptive of a feature or function of Applicant’s mobile software applications, i.e., that Applicant’s goods feature mobile applications providing a live streaming based “AMA (Ask Me Anything)” crowd knowledge platform that includes 24 hour functions and availability.<sup>15</sup>

According to the Examining Attorney the evidence discussed, together with the definitions of record, noted above, establishes that the average purchaser would be accustomed to seeing these terms used to refer specifically to features of mobile applications and related computer software.<sup>16</sup>

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<sup>14</sup> See September 23, 2019 Office Action at TSDR 87, 91-94, 96-97 and April 21, 2020 Final Office Action at TSDR 69-72, 75.

<sup>15</sup> Examining Attorney’s Brief at 6 TTABVUE 3.

<sup>16</sup> Examining Attorney’s Brief at 6 TTABVUE 3.

Applicant contends that the term LIVE24 is “at worst” suggestive because it does not immediately or directly tell consumers what to expect from its goods.<sup>17</sup> However, the question is not whether someone presented only with the mark could guess what the goods and/or services are, but “whether someone who knows what the goods and[/or] services are will understand the mark to convey information about them.” *DuoProSS Meditech v. Inviro Med. Devices*, 103 USPQ2d at 1757 (quoting *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-17 (TTAB 2002)); *In re Mueller Sports*, 126 USPQ2d at 1587. Given the evidence of record, it is clear that the wording “LIVE24” conveys some information about Applicant’s application software, namely, that it features a type of live streaming with 24 hour functionality.

Applicant further argues that the mark is suggestive because it does not immediately describe its goods and/or feature of the goods in the nature of a “Multi-function crowd knowledge platform with expert AMA” and “[t]here is also a feature to scroll through previously answered questions, which would not be a live component to the AMA,” neither of which are identified in the application.<sup>18</sup> However, as previously noted, the determination of whether a mark is merely descriptive is made in relation to an applicant’s identified goods, not in the abstract. *DuoProSS Meditech v. Inviro Med. Devices*, 103 USPQ2d at 1757; *In re Chamber of Commerce*, 102 USPQ2d at 1219. “A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson*,

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<sup>17</sup> Applicant’s Brief p. 6 (4 TTABVUE 7).

<sup>18</sup> See Applicant’s Brief pp. 7-8 (4 TTABVUE 8-9).

71 USPQ2d at 1371 (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)). It is enough if a mark describes only one significant function, attribute, or property. *In re Chamber of Commerce*, 102 USPQ2d at 1219; see *In re Oppedahl & Larson*, 71 USPQ2d at 1371.

Here, the identification of goods does not include the additional software features nor any services to which Applicant refers. Thus, that Applicant's mobile application may now offer software functions and features that differ from those identified in the application and that may confer non-descriptive meaning onto the applied-for mark is irrelevant because descriptiveness is determined in relation to the identified goods.

A mark is suggestive if some imagination, thought, or perception is needed to understand the nature of the goods and/or services described in the mark; whereas a descriptive term immediately and directly conveys some information about the goods and/or services. See *Stoncor Grp., Inc. v. Specialty Coatings, Inc.*, 759 F.3d 1327, 111 USPQ2d 1649, 1652 (Fed. Cir. 2014) (citing *DuoProSS Meditech v. Inviro Med. Devices*, 103 USPQ2d at 1755). Here, the wording "LIVE24" directly conveys information about Applicant's goods, namely, that they feature "live video and audio streaming."<sup>19</sup> The identification of goods itself identifies the "live" nature of the goods. Advertising for Applicant's goods also notes that posts made on the application platform are available for 24 hours after posting.<sup>20</sup> That the mark does not specify "24/7," as in twenty-four hours, seven days a week, does not render the number 24

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<sup>19</sup> See Applicant's Brief p.7 (4 TTABVUE 8).

<sup>20</sup> See e.g., April 21, 2020 Final Office Action at TSDR 69-72.

any less descriptive, as demonstrated by the evidence in the record including registrations with disclaimers of the terms “24” and “LIVE.” No amount of imagination, thought, or perception is needed to understand that Applicant’s downloadable mobile applications feature live streaming around the world 24 hours a day and deletes posts after 24 hours.

In this regard, we must remember to consider the issue of mere descriptiveness by looking at the mark in its entirety. Common words may be descriptive when standing alone, but when used together in a composite mark, they may become a valid trademark. *See In re Phoseon Tech., Inc.*, 103 USPQ2d 1822, 1823 (TTAB 2012) citing *Concurrent Tech. Inc. v. Concurrent Tech. Corp.*, 12 USPQ2d 1054, 1057 (TTAB (1989) (CONCURRENT TECHNOLOGIES CORPORATION found not merely descriptive of printed electronic circuit boards because, while “concurrent” had meaning in the computer field, “concurrent technologies” had no established meaning in relation to computer hardware or software). When two or more merely descriptive terms are combined, the determination of whether the composite also has a merely descriptive significance turns on the question of whether the combination of terms evokes a new and unique commercial impression. If each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *See In re Phoseon*, 103 USPQ2d at 1823 citing *In re Tower Tech, Inc.*, 64 USPQ2d 1314 (SMARTTOWER merely descriptive of commercial and industrial cooling towers); *In re Sun Microsystems Inc.*, 59 USPQ2d 1084 (TTAB 2001) (AGENTBEANS merely descriptive of computer programs for use

in developing and deploying application programs); *In re Putman Publ'g Co.*, 39 USPQ2d 2021 (TTAB 1996) (FOOD & BEVERAGE ONLINE merely descriptive of news and information services in the food processing industry).

Applicant does not deny that its mobile application provides a live platform nor does it deny that its goods feature a live streaming application allowing users to post videos and have questions answered 24 hours a day, and that the posts are made available for 24 hours. Instead, Applicant contends that it “shifted its goods and services since 2017 . . . .”<sup>21</sup> The fact that Applicant has added additional features to the goods bearing the subject mark does not mean that the original functions and features do not still exist and are unavailable for use by consumers. The evidence, including excerpts from the Internet and third-party registrations, demonstrates that consumers who encounter Applicant’s mark in commerce in the context of the identified goods would immediately perceive that LIVE24 pertains to live streaming applications that are available 24 hours a day and that allow users to post content that is auto-deleted after 24 hours.

Thus, Applicant’s mark “LIVE24” conveys to consumers that its mobile application features a live streaming application allowing users to utilize the mobile applications 24 hours a day in order to post videos and view content 24 hours a day, have questions answered 24 hours a day, and where posts on the app are made available for 24 hours and auto deletes them after 24 hours.<sup>22</sup> Accordingly, for the

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<sup>21</sup> Applicant’s Brief p. 7 (4 TTABVUE 8).

<sup>22</sup> September 23, 2019 Office Action at 87, 91-94.

reasons set forth above, Applicant's mark is merely descriptive under § 2(e)(1) of the Trademark Act.

## II. Amendment of Identification of Goods

The identification of goods in Applicant's application includes the wording "AMA (Ask-Me-Anything)." The Examining Attorney contends that this language is unacceptable because it improperly uses a third-party's registered trademarks and fails to describe the function of the software, noting that the term AMA and the wording ASK ME ANYTHING are registered trademarks owned by Reddit, Inc. *See* U.S. Registration Nos. 5134849 on the Supplemental Register for the mark ASK ME ANYTHING, 5220980 for the mark , and 5283555 for the mark AMA, all for "entertainment services, namely, online non-downloadable videos of individuals responding to interview-style questions on the subjects of lifestyles, social issues, politics, foreign affairs, popular culture, the arts, humor, fiction, and literature."<sup>23</sup> Accordingly, the Examining Attorney requested that Applicant amend the identification to specify the common commercial or generic name of the goods. Despite the request to amend its application made by the Examining Attorney in the first and final Office Actions, Applicant neither amended its identification of goods nor addressed the request for amendment.

Identifications of goods and/or services should generally comprise generic, everyday wording for the goods and/or services, and exclude proprietary or

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<sup>23</sup> September 23, 2019 Office Action at TSDR 7-14; April 21, 2020 Final Office Action at TSDR 77-84.

potentially-proprietary wording. *See* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) §§ 1402.01, 1402.09 (Oct. 2018). It is inappropriate to use a registered mark to identify a kind of product or a service, because such a mark indicates origin in only one party and cannot be used to define goods that originate in a party other than the registrant. *Camloc Fastener Corp. v. Grant*, 119 USPQ 264, 265 n.1 (TTAB 1958) (noting that registered mark must be deleted from identification of goods); TMEP § 1402.09.

In light of the case law, Trademark Rule of Practice 2.32(a)(6), and established policy set forth in the TRADEMARK MANUAL OF EXAMINING PROCEDURE, as well as the lack of any argument from Applicant as to why the inclusion of a third party's registered trademarks in its identification of goods is proper or why its identification does not include a third party's registered trademarks, Applicant's failure to address this matter is not acceptable and results in refusal of registration.

**Decision:** The refusal to register LIVE 24 under § 2(e)(1) of the Trademark Act, and the requirement for an acceptable identification of goods and the refusal of registration in the absence thereof, are affirmed.